

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
)	
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010)	WT Docket No. 96-86
)	
)	
Harris County, Texas Request for Waiver)	

ORDER

Adopted: November 14, 2008

Released: November 14, 2008

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. On July 31, 2007, the Commission adopted a *Second Report and Order* revising the rules governing the 700 MHz band.¹ In the *Second Report and Order*, the Commission redesignated ten megahertz of public safety 700 MHz spectrum (763-768/793-798 MHz) for the purpose of establishing a nationwide, interoperable broadband public safety communications network. In order to accommodate this broadband allocation, the Commission consolidated the public safety narrowband channels so that they are located at 769-775/799-805 MHz.² Subject to certain conditions and limitations, the Commission determined that the Upper 700 MHz Band D Block licensee will pay the costs associated with relocating public safety narrowband operations to the consolidated channels.³ To facilitate the relocation process, and clearly define the costs that would be entitled to reimbursement, the Commission required every 700 MHz band public safety licensee, whether holding individual narrowband authorizations or operating pursuant to a State License, to certify the number of narrowband mobile and portable handsets, and base stations serving these handsets in operation as of August 30, 2007 (30 days following adoption of the *Second Report and Order*).⁴ The Commission also prohibited authorization, whether pursuant to individual license or State License, of any new narrowband operations outside of the consolidated

¹ Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket No. 06-229, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (*Second Report and Order*).

² *Id.* at 15409 ¶ 329.

³ *Id.* at 15411 ¶ 336.

⁴ *Id.* at 15411 ¶¶ 336-337.

channels as of August 30, 2007, and cautioned that any equipment deployed outside of the consolidated channels after August 30, 2007 would be ineligible for relocation funding.⁵

2. On October 17, 2007, the Harris County, Texas Information Technology Center (Harris) requested waiver relief concerning narrowband operations outside of the consolidated channels in support of its 700 MHz system.⁶ Specifically, Harris requests waiver of the provision of the *Second Report and Order* prohibiting new narrowband operations outside the consolidated narrowband channels after August 30, 2007, so that it may deploy new narrowband equipment, including handsets and base stations, outside the consolidated narrowband channels to operate in conjunction with Harris's already licensed 700 MHz system. For the reasons discussed below, we grant the Waiver Request on a limited basis, and defer action on the Waiver Request in all other respects.

II. DISCUSSION

3. As an initial matter, several parties have filed petitions for reconsideration of provisions of the *Second Report and Order*, including the prohibition on authorization of new narrowband operations outside of the consolidated channels following August 30, 2007, and the limitation on cost reimbursement to equipment that was in operation as of August 30, 2007.⁷ In addition, on May 14, 2008, the Commission issued a *Second Further Notice of Proposed Rulemaking* seeking comment on, among other issues, narrowband relocation, including the petitions for reconsideration of the *Second Report and Order*.⁸ As a follow-up to this *Second Further Notice*, the Commission issued a *Third Further Notice of Proposed Rulemaking* on September 25, 2008, which sought comment on tentative conclusions and proposed rules concerning various 700 MHz public safety spectrum issues, including narrowband relocation.⁹ In the interests of public safety, however, we provide Harris limited waiver relief of the prohibition on new narrowband operations outside of the consolidated channels after August 30, 2007. As further explained below, the Commission will determine the duration of such relief, and whether Harris is entitled to reimbursement for relocation of equipment installed after August 30, 2007, after fully considering the public record submitted in response to both the *Second Further Notice* and *Third Further Notice*.

4. Section 1.925 states that to obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest,¹⁰ or the applicant has no reasonable alternative.¹¹ An applicant seeking a waiver faces a high hurdle and must

⁵ *Id.* at 15412 ¶ 339.

⁶ Request for Waiver of Commission Rules, filed by Harris County, Texas Information Technology Center, October 17, 2007 (Waiver Request).

⁷ *See, e.g.*, Commonwealth of Virginia, Virginia State Police, Petition for Reconsideration, PS Docket No. 06-229, WT Docket No. 96-86 (filed Sept. 24, 2007).

⁸ *See* Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, *Second Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8047 (2008) (*Second Further Notice*).

⁹ *See* Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, *Third Further Notice of Proposed Rulemaking*, FCC 08-230 (rel. Sept. 25, 2008) (*Third Further Notice*).

¹⁰ 47 C.F.R. § 1.925(b)(3)(i).

¹¹ 47 C.F.R. § 1.925(b)(3)(ii).

plead with particularity the facts and circumstances that warrant a waiver.¹²

5. On November 14, 2007, the Commission adopted and released an Order that granted the Commonwealth of Virginia, Virginia State Police (Virginia) limited interim waiver relief to enable Virginia to continue to deploy new narrowband operations outside of the consolidated narrowband channels.¹³ In this Order, the Commission found that it is in the public interest to “provide interim waiver relief for continued deployment outside of the consolidated narrowband channels where there has been a showing of potential public harm and there is evidence of a comprehensive 700 MHz deployment plan that predates August 30, 2007 for which equipment has been received and/or deployed.”¹⁴ We next examine whether Harris satisfies these criteria.

6. In its Waiver Request, Harris makes a general claim of potential public harm should it be unable to continue to deploy additional narrowband operations following August 30, 2007. Harris states that it began planning its 700 MHz system in 2004 and placed orders for equipment in May 2005.¹⁵ Harris states that it has invested approximately \$5.6 million implementing the system and has deployed a Project 25 SmartZone master control switch and 30 repeaters across six sites.¹⁶ According to Harris, 13 portable units have been deployed for testing and optimization, and 9,732 subscriber units and 10 repeaters are awaiting deployment on the 700 MHz system.¹⁷ Harris asserts that it can complete deployment by the end of December 2008. Harris states that the system is designed to provide Level 6 Interoperability to 512 different agencies and argues that its “inability to fully utilize the planned system threatens the safety and lives of Harris County Technology Center’s first responders and the health and property of the public they serve.”¹⁸

7. We find that Harris has made a sufficient showing of “potential public harm,” based on its representation that its ability to respond to a public safety emergency would be compromised should it be unable to continue to deploy new narrowband operations outside of the consolidated narrowband channels. We also find that Harris has provided sufficient “evidence of a comprehensive 700 MHz deployment plan that predates August 30, 2007, for which equipment has been received and/or deployed.” Having satisfied the criteria established by the Commission in the *Virginia Order*, we find it to be in the public interest to grant Harris limited interim waiver relief to deploy new narrowband operations outside the consolidated bands after August 30, 2007, until the Commission resolves the outstanding narrowband issues pending in the *Second Further Notice* and *Third Further Notice*. For the same reason, we defer ruling on the continued duration of this limited waiver relief, and whether Harris would be entitled to cost reimbursement for any new narrowband operations deployed following August 30, 2007, until the Commission rules on the outstanding petitions.

8. Our decision to permit Harris to continue to place new narrowband radios into operation after August 30, 2007 is without prejudice to the Commission’s subsequent ruling on these outstanding waiver issues. To the extent, however, that Harris is able to deploy in the consolidated bands and avoid

¹² See *WAIT Radio v. FCC*, 418 F.2d 1153, 1158-59 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (D.C. Cir. 1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹³ Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, 22 FCC Rcd 20290 (2007) (*Virginia Order*).

¹⁴ *Id.* at 20293 ¶ 7.

¹⁵ Waiver Request at 2.

¹⁶ *Id.* at 2, 4.

¹⁷ See E-mail from David Dodson, Harris County Information Technology Center, to Jeff Cohen, Senior Legal Counsel, Public Safety and Homeland Security Bureau, dated Nov. 6, 2007 (Supplemental Waiver Request).

¹⁸ Waiver Request at 3-4. Harris notes that it manages services for 13 Texas counties with the Houston-Galveston Area Council of Governments. Supplemental Waiver Request at 1.

the need for relocation, we encourage it to do so. Such deployment would eliminate any future disruptions to operations due to the need to relocate, and would reduce the overall cost of the relocation process.¹⁹

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that pursuant to sections 1, 4(i), 301, 303, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 301, 303, 332, and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, THIS ORDER in PS Docket No. 06-229 and WT Docket No. 96-86 is ADOPTED.

10. IT IS FURTHER ORDERED that the Waiver Request filed by Harris County, Texas Information Technology Center on October 17, 2007 is GRANTED to the extent discussed herein, and that action on the Waiver Request is DEFERRED IN ALL OTHER RESPECTS.

11. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Derek K. Poarch
Chief
Public Safety and Homeland Security Bureau

¹⁹ To the extent that waiver of any Commission rules would be required to enable immediate deployment in the consolidated bands, such requests may be filed in accordance with the Commission's waiver rules, 47 C.F.R. § 1.925. We also note that public safety entities in need of commencing operations in advance of Commission approval of a 700 MHz regional plan should file a request for Special Temporary Authority. See Public Safety and Homeland Security Bureau Reminds 700 MHz Regional Planning Committees of the January 31, 2008 Deadline to Amend 700 MHz Narrowband Plans and Provides Further Guidance, *Public Notice*, 22 FCC Rcd 21889, 21892 (PSHSB 2007).